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| DISTRICT COURT, ADAMS COUNTY, COLORADO  Address: 1100 Judicial Center Drive  Brighton, CO 80601  Phone Number: (303) 6558-1161 | DATE FILED: March 13, 2017 5:5  FILING ID: 5A279AA77D20C CASE NUMBER: 2016CV31654 |
| Plaintiff: **KAREN KALAVITY and PATRICIA BABBITT,** |  |
| v. |  |
| Defendants: **JOSEPH D. FINDLEY, individually; KAUFMAN & FINDLEY, P.C., A COLORADO PROFESSIONAL CORPORATION; RE MAX TRADITIONS, INC.; KEITH KANEMOTO, an**  **individual; ALAN JONES, an individual; COLDWELL BANKER, LLC and COLDWELL BANKER RESIDENTIAL; CBRE INC., ROBERT A. KOROSEC,**  **an individual; and JOHN J. TROHA, an individual.** | **COURT USE ONLY** |
| **ATTORNEYS FOR PLAINTIFFS:**  Law Offices of Randy B. Corporon, P.C. Randy B. Corporon, #29861  Brian E. Lewis, #41295 Kevin J. Farrell, #27091  2821 S. Parker Road, Suite 555  Aurora, CO 80014  Telephone: 303-749-0062  Fax Number: 720-836-4201 | Case Number: 16CV31654 Division: A |
| **PLAINTIFFS’ FORTHWITH MOTION FOR LEAVE TO AMEND COMPLAINT AND FOR EXPEDITED BRIEFING SCHEDULE** | |

Plaintiffs Karen Kalavity and Patricia Babbitt, through undersigned counsel, hereby submit their *Forthwith Motion for Leave to Amend Complaint and for Expedited Briefing Schedule* and in support thereof states as follows:

1. Undersigned counsel hereby certifies he has conferred with counsel for the defendants pursuant to **C.R.C.P. 121, §1-15(8)** and that the requested relief is opposed. This motion is filed forthwith due to the nature of the relief requested.
2. The Amended Complaint in this matter was filed by Plaintiffs’ former co-counsel, Mr. John Dougherty, on January 30, 2017. As of March 7, 2017, all defendants have either filed answers or motions to dismiss in response. Today, March 13, 2017, is Plaintiffs’ enlarged deadline to respond to the motion to dismiss filed by defendants Joseph D. Findley and Findley & Kaufman & Findley, P.C.
3. Plaintiffs’ Co-Counsel, Mr. John B. Dougherty, withdrew from representing Plaintiff Kalavity on February 14; on February 20 undersigned counsel substituted for Mr. Dougherty on behalf of Plaintiff Babbitt.
4. Prior to these changes in representation counsel’s role had been chiefly advisory.

Although former counsel conferred with present counsel while developing the Amended Complaint, it was filed without the latter’s approval.

1. Counsel, having reviewed the Amended Complaint as well as the various motions to dismiss filed by the defendants, believe that it is necessary to again amend the Complaint and that failure to do so may seriously prejudice Plaintiffs.
2. **C.R.C.P. 15(a)** states that once a party has amended by right, a party may again amend his pleading only be leave of court or written consent of the adverse party. Pursuant to that rule, such leave shall be freely given when justice so requires.
3. The rule does not explicitly require that a copy of the proposed amended pleading be provided. Though doing so is clearly the best practice, for reasons set forth below Plaintiffs have been unable to prepare such a document before it has become necessary to file this motion.
4. Due not only to the nature and number of the issues presented, but counsel’s

ongoing commitments in other cases, it has not been possible to prepare a proposed amended

complaint in time to submit with this motion. Plaintiffs’ counsel are currently at a similar stage in cases with the Colorado Court of Appeals and with the federal court and which have been time and resource intensive.

1. Furthermore, Plaintiffs’ lead counsel in this matter, Randy Corporon, has been out of the office for the past week attending to his elderly father in Kansas, who was recently diagnosed with a serious illness. Mr. Corporon will continue to be out of the office until March 22, 2017 as he continues to be with his father as well as to attend the wedding of his daughter. During that time, Mr. Corporon will have very limited time in order to review, comment upon, and approve an amended complaint.
2. Plaintiffs identify below areas which are likely to be addressed via amendment, so that the Court and the defendants will have some idea of what may change. Nothing in this motion should be construed as an admission with respect to any contention made by any defendant.
3. The amended complaint will address possible deficiencies in the alleged facts, both generally and in support of each cause of action set forth. In particular, Plaintiffs seek to more fully set forth the sequence of events and relationships between the parties which give rise to their complaint.
4. Plaintiffs intend generally to amend the statements and allegations of fact so as to provide greater assurance that their pleading burden has been met.
5. Plaintiffs intend to consider the status of several of the defendants and determine whether dismissal against any of them is appropriate and, if so, to ask for dismissal accordingly.
6. Plaintiffs intend to consider whether any of their causes of action should be restated, consolidated or removed.
7. Any issues presented among the motions to dismiss filed by any defendant which are capable of being addressed via amendment will be addressed.
8. Plaintiffs do not anticipate adding additional parties or causes of action.
9. Amending the complaint will further the interests of justice and of judicial economy by ensuring that this matter proceeds only on its merits, rather than continue to litigate any deficiencies why may be the result only of inadequate pleading. Plaintiffs propose below an expedited briefing schedule which will minimize any prejudice due to the delay in allowing amendment.
10. Failure to allow Plaintiffs the opportunity to further amend their pleadings would be unjust and could result in the preventable dismissal of their case. No defendant will be unduly prejudiced by permitting amendment as they shall still have the full array of remedies available to them as to any issues which remain and shall not have to answer those that do not.
11. Plaintiffs respectfully request that they be granted 21 days from the date of the

Court’s order granting this motion in which to file an amended complaint. The requested time is necessary and just considering Mr. Corporon’s extended absence and the issues involved. This amount of time is not unreasonable and will not unduly prejudice any defendant.

1. In order to minimize any potential prejudice, Plaintiffs respectfully request pursuant to **C.R.C.P. 121, §1-15(1)(b)** that the Court set an expedited briefing schedule on this motion, with any responses from the defendants due within 7 days and Plaintiffs’ reply, if any, due within 3 days of the last response filed.
2. Plaintiffs also respectfully request pursuant to **C.R.C.P. 6(b)** that the Court stay Plaintiffs’ response deadlines with respect to any outstanding motions filed by any defendant. If this motion is granted, any outstanding motions to dismiss should be deemed moot. Plaintiff requests 7 days from the date of filing their second amended complaint in which to answer any surviving motions.
3. If the Court denies this motion, Plaintiffs respectfully request that their deadline to answer any outstanding motions be enlarged such that Plaintiffs’ responses be due within 14 days of the Court’s order.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court set an expedited briefing schedule for this motion, that any response deadlines with respect to all outstanding motions filed by the defendants be stayed during the pendency of this motion, that Plaintiffs be granted leave to file an amended complaint within 21 days of the Court’s order granting this motion, that Plaintiffs’ have 14 days to respond to all outstanding motions if this motion is denied, and for any and such further relief as the Court deems proper and just.

Respectfully submitted this 13th day of March, 2017.

# LAW OFFICES OF

**RANDY B. CORPORON, P.C.**

Randy B. Corporon

Kevin J. Farrell Brian E. Lewis

# ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I certify that on this 13th day of March, 2017, a true and correct copy of the

# PLAINTIFFS’ FORTHWITH MOTION FOR LEAVE TO AMEND COMPLAINT AND

**FOR EXPEDITED BRIEFING SCHEDULE** was electronically filed with service to the following:

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**REAL ESTATE LLC, AND ALAN JONES**